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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1982

ROBERT L. STEVENS,

*Petitioner,*

VS.

GATEWAY TRANSPORTATION COMPANY and LOCAL 710, INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

*Respondents.*

— Consolidated With —

AIELT EVANS,

*Petitioner,*

VS.

MAISLIN TRANSPORT, LTD. (formerly GATEWAY TRANSPORTATION COMPANY, INC.) and LOCAL UNION 710 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

*Respondents.*

## ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

## BRIEF OF RESPONDENT UNION IN OPPOSITION

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## QUESTION PRESENTED

Whether the Court below properly chose the 90-day statute of limitations found in the Illinois Uniform Arbitration Act, Ill. Rev. Stat. ch. 10 § 112(b), to bar Petitioners' actions brought under § 301 of the Labor-Management Relations Act, 29 U.S.C. § 185, alleging a breach of the duty of fair representation and breach of a collective bargaining agreement, when Petitioners concede that their causes of action against both the Respondent Union and Company should be identical for limitations purposes and are properly characterized as actions to vacate an arbitration award under *United Parcel Service, Inc.* v. *Mitchell*, 451 U.S. 56 (1981).

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**ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT**

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## BRIEF OF RESPONDENT UNION IN OPPOSITION

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### OPINION BELOW

The decision of the Ccurt of Appeals appears as pages 7-16a of Petitioners' Appendix C and is reported officially at 696 F. 2d 500 (1982).

## JURISDICTION

The judgment of the Court of Appeals was entered on December 22, 1982. Rehearing was denied on January 20, 1983 (Petit. App. 17-18a). The petition for writ of certiorari was filed on April 19, 1983. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

## STATEMENT OF THE CASE

### A.

### Proceedings Below

Both actions originated in state court and were removed to federal court. The complaints alleged that the Respondent, Gateway Transportation Company (or Maislin Transport, Ltd.) (the "Company") wrongfully terminated Petitioners from their employment and that the Respondent, Local 710, International Brotherhood of Teamsters (the "Union") failed to properly represent the Petitioners in grievance proceedings under a collective bargaining agreement. The District Court, in two separate proceedings, granted summary judgment and found both actions untimely filed. The Court of Appeals consolidated the cases. On December 22, 1982, the Court of Appeals issued its decision and judgment affirming the grants of summary judgment (Petit. App. 7-16a, 696 F. 2d 500). Rehearing was denied January 20, 1983 (Petit. App. 17-18a).

### B.

### Statement of Facts

Respondents are parties to a collective bargaining agreement containing a grievance procedure. Under that procedure, a majority decision of a joint committee is final and binding.

On May 10, 1977, the Company terminated Petitioner Stevens for refusing to take a blood alcohol test. On June 2, 1977, the joint committee upheld the discharge. Petitioner Stevens did not file his action until May 10, 1979 — almost two years after the joint committee's decision.

On April 2, 1979, Petitioner Evans was terminated for alleged intoxication. On May 31, 1979, the joint committee upheld the discharge. Evans did not file his action against the Company until April 20, 1981 and did not add the Union as a party until October 21, 1981 — more than two years after the joint committee's decision.

## REASONS FOR DENYING THE WRIT

### A.

### Petitioners Have Conceded The Issues Currently Pending Before This Court.

Petitioners have conceded the issues currently pending before this Court. Petitioners do not dispute that the proper characterization of their duty of fair representation — breach of contract action under § 301, 29 U.S.C. § 185, against both Respondents is one to vacate an arbitration award under authority of *United Parcel Service, Inc.* v. *Mitchell,* 451 U.S. 56 (1981) (Petition at i-ii, 5-6).[1] Petitioners complain only of the choice of which arbitration limitations should apply to their claim: the short 90-day limitation found in the Illinois Uniform Arbitration Act, Ill. Rev. Stat. ch. 10 § 112(b) for vacating arbitration awards (as applied by the Court below) or the lengthy five year limitations provision found in the "catch all"

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1. "[Petitioners]urged that the Illinois five year statute of limitations, which applies to awards of arbitration, should be applied" (Petition at 5). The Court below noted this concession. 696 F. 2d at 504.

limitations provision of Ill. Rev. Stat. ch. 83 § 16 for "actions . . . on awards of arbitration." Petitioners do *not* contend, as in *Flowers* v. *Local 2602 of United Steelworkers*, 671 F. 2d 87 (2nd Cir., 1981), *cert. granted*, —— U.S. ——, 103 S. Ct. 442, 74 L. Ed. 2d 599 (1982) and *Del Costello* v. *International Brotherhood of Teamsters*, 679 F. 2d 879 (4th Cir. 1982), *cert. granted*, —— U.S. ——, 103 S. Ct. 442, 74 L. Ed. 2d 599 (1982) that some other state statute should apply to characterize their cause of action, or that the statute of limitations for the claims against the Company and the Union are different.[2] They simply agree that for characterization purposes, their action is closely analogous to an action to vacate an arbitration award, *Mitchell*, 451 U.S. at 61, n. 3, and that the same limitations period should apply to both claims.

Having conceded the issues of characterization and identical periods of limitations, the issue of which Illinois arbitration provision should apply is not worthy of a grant of certiorari. There is no split in the circuits on the issues raised by Petitioners and the issues raised by Petitioners do not conflict with this Court's *Mitchell* decision.

**B.**

**The Five Year Limitations Period Urged By Petitioners Is Contrary To Federal Policy.**

The five year limitations period of Ill. Rev. Stat. ch 83 § 16 urged by Petitioners and rejected below, 696 F. 2d at 503, is contrary to the federal policy of the " 'rapid disposition of labor disputes.' " *Mitchell*, 451 U.S. at 63. The 90-day limitations period found in the Illinois Uniform Arbitration Act satisfies that policy.

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2. Petitioners do not even mention *Flowers* and *Del Costello* in their Petition.

## C.

### Ill. Rev. Stat. Ch. 83 § 16 Is Not A Specific Statute Of Limitations For Employee Challenges To Awards Of Joint Panels Under Collective Bargaining Agreements.

The general provisions of Ill. Rev. Stat. ch. 83 § 16 for "actions on . . . awards of arbitration" is not, as Petitioners urge (Petition at 7-9), a "*specific* . . . statute of limitations for employee challenges to awards of a joint panel or similar body. . .," *Mitchell*, 451 U.S. at 64, justifying the use of a lengthy five year limitations period [emphasis added]. The Court below rejected this argument. 696 F. 2d at 504-05. Rather, ch. 83 § 16 is a vague, general catch all provision enacted by the Illinois legislature in 1872, long before the enactment of § 301 in 1947 and long before the enactment of the Illinois Uniform Arbitration Act in 1961 which provides a detailed statutory scheme for vacating arbitration awards. *Mitchell, id.*

## D.

### The Exclusionary Language Found In The Illinois Uniform Arbitration Act Does Not Prevent Application Of That Statute.

The exclusionary language found in the Illinois Uniform Arbitration Act, Ill. Rev. Stat. ch. 10 § 112(e), exempting "... any award entered as a result of an arbitration agreement which is part of or pursuant to a collective bargaining agreement. . ." does not change the result as urged by Petitioners (Petition at 11). *Mitchell* only requires that the statute chosen be "closely analogous," and not identical. Indeed, in *Mitchell*, this Court rejected the same argument noting that the New York arbitration act was

applicable notwithstanding the fact that the plaintiff could not bring a suit under that statute. 451 U.S. at 61, n. 3.[3]

**E.**

**Petitioners' "Special Grounds" Argument Does Not Defeat The Choice Of The Limitations Period Found In The Illinois Uniform Arbitration Act.**

Petitioners' argument (Petition at 9-10) that the specific grounds for vacating an award under the Illinois Uniform Arbitration Act do not appear in this case (*id.* at 10) is simply wrong. The Court below rejected this argument, 696 F. 2d at 504, n. 4. Petitioners allege the Union breached the duty of fair representation. In order to establish a breach, Petitioners need to show "arbitrary or bad faith conduct on the part of the union," *Vaca* v. *Sipes*, 386 U.S. 171, 193 (1966) and must show "substantial evidence of fraud, deceitful action or dishonest conduct," *Humphrey* v. *Moore*, 375 U.S. 335, 348 (1964). See also, *Motor Coach Employees* v. *Lockridge*, 403 U.S. 274, 299 (1971). They need to show the same grounds necessary to vacate an award under the Illinois Uniform Arbitration Act. Further, this assertion does not prevent the characterization from being "closely analogous" under *Mitchell*.

**F.**

**Petitioners' § 10(b) Argument Is Inapplicable To This Case.**

Petitioners' assertion (Petition at 13-15) that the six month limitation found in § 10(b) of the National Labor

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3. The Court below noted other decisions where the state arbitration act, by its terms, did not apply to an action to vacate an arbitration award but the limitations period of that act was nevertheless applied. 696 F. 2d at 504.

Relations Act, 29 U.S.C. § 160(b), is inapplicable since it does not, by its specific terms, concern "accusations of intoxication on the job" (Petition at 13), is specious at best. The Court below found that Petitioners' two year old claims were barred by the limitations provisions of the Illinois Uniform Arbitration Act and, in passing, also noted that the claims were barred by § 10(b)'s limitations period as well. Therefore, it was simply not necessary for the Court below to decide which of these two statutes applied. 696 F. 2d at 505. The application or non-application of § 10(b)'s six month limitations period will not revive Petitioners' two year old claims.

## CONCLUSION

Wherefore, for the above reasons, the Respondent Union submits that the Petition should be denied.

Respectfully submitted,

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